

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, SEPTEMBER 30, 2009**

A. Roll call

The Special City Council meeting of September 30, 2009, held at the Hutchins Street Square, 125 South Hutchins Street, Lodi, was called to order by Mayor Hansen at 6:34 p.m.

Present: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Absent: None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Regular Calendar

B-1 Review Policy Regarding Invocations at Council Meetings (CA)

Mayor Hansen provided a brief overview of the current status of the meeting. He specifically discussed the adoption of the existing policy in 2006, case law on the subject matter of invocations at legislative meetings, receipt of e-mails from those in and outside of the community, chronology of events, contents of the existing policy, letters from Freedom From Religion Foundation, closed session decision to discuss the matter in open session, public comments received at the August 5 meeting, setting the special meeting for September 30, the location of the current meeting to accommodate the larger crowd, options set forth in the staff report, and the proposed format of the current meeting.

City Attorney Schwabauer provided a brief overview of the status of the subject matter of invocations, advice based on closed session discussions versus open session, legislative prayer not used to proselytize under U.S. Constitution and California Constitution, Marsh case conclusion that legislative prayer cannot be used to proselytize, purpose of legislative prayer as the main question of consideration, prayer for civic responsibility purposes, courts not clear on what is proselytizing, differing court opinions, Rubin versus City of Burbank case conclusion that reference to Christ in 20% of invocations was proselytizing, other court opinions conclusion that mere reference to specific faith is not proselytizing, possible examples of proselytizing, options associated with policies for invocations, and option with open call for civic duty without City involvement.

In response to Council Member Mounce, Mr. Schwabauer stated the policy attached to the staff report came from the Alliance Defense Fund (ADF) and an option for community leaders to participate could be included.

Mayor Hansen opened the public comment period.

Dale Edwards spoke in favor of uncensored prayer.

Ken Owen, representing Citizens for Uncensored Prayer, spoke in favor of uncensored prayer.

Duane Linstrom spoke in favor of uncensored prayer.

Richard Enderlein spoke in favor of eliminating public prayer.

Norman Walker spoke in favor of eliminating public prayer.

Robin Rushing spoke in favor of eliminating public prayer. In response to Council Member Johnson, Mr. Rushing stated he would not mind if all faiths were invited and participated. In response to Mr. Rushing, Mr. Schwabauer confirmed that an invitation to participate was provided to the Sikh Temple.

Mark Bowman, representing ADF, spoke in favor of uncensored prayer. Mr. Bowman also provided an overview of the ADF policy as provided with the staff report.

Terry Thompson spoke in favor of uncensored prayer.

Perry Kallis spoke in favor of uncensored prayer.

Kevin Suess spoke in favor of uncensored prayer.

Steve Newman spoke in favor of uncensored prayer.

Mark Wilcox spoke in favor of uncensored prayer.

Frank Nolton spoke in favor of uncensored prayer.

Rick Cropper spoke in favor of uncensored prayer.

Dennis Norton spoke in favor of the Council making the right decision.

Greg Goehring spoke in favor of uncensored prayer and the ADF policy.

John Sanders spoke in favor of uncensored prayer.

Rafael Pazo spoke in favor of eliminating public prayer.

Tom Ikelman spoke in favor of eliminating public prayer.

Karen Buchanan spoke in favor of eliminating public prayer.

Carole Lew spoke in favor of uncensored prayer.

Susan Robinson spoke in favor of eliminating public prayer.

Jane Rossell spoke in favor of eliminating public prayer and having a moment of silence.

Carol Velarde spoke in favor of eliminating public prayer.

Nikos Leverenz spoke in favor of eliminating public prayer.

Walter Strong spoke in favor of uncensored prayer.

Brett Westover spoke in favor of eliminating public prayer.

Alyssa Palomares spoke in favor of eliminating public prayer and having a moment of silence.

Vincent Sayles spoke in favor of uncensored prayer.

Paul Storey spoke in favor of eliminating public prayer.

Maria Hernandez spoke in favor of uncensored prayer.

Frank Alvarez spoke in favor of uncensored prayer.

David Diskin spoke in favor of eliminating public prayer and having a moment of silence.

Steve Thoreson spoke in favor of eliminating public prayer.

Freedom Baerheim spoke in favor of eliminating public prayer and having a moment of silence.

David Gibbons spoke in favor of uncensored prayer and the ADF policy.

David Huey spoke in favor of uncensored prayer.

Shaun Fowler spoke in favor of uncensored prayer.

Ora Emmer spoke in favor of uncensored prayer.

Marilyn Burns spoke in favor of uncensored prayer.

Melissa Ward spoke in favor of uncensored prayer.

Ivy Ng spoke in favor of uncensored prayer.

Maggie Ho spoke in favor of uncensored prayer.

Janiece Wan spoke in favor of uncensored prayer.

Dave Strunk spoke in favor of following the laws set forth by the courts.

Emily Howard spoke in favor of uncensored prayer.

Claire Lima spoke in favor of uncensored prayer.

Ina Rodman spoke in favor of eliminating public prayer.

Sara Wood spoke in favor of eliminating public prayer and having a moment of silence.

Steven Donally spoke in favor of eliminating public prayer and having a moment of silence.

Stephen Somali spoke in favor of uncensored prayer.

Mayor Hansen closed the public comment period. Mayor Hansen brought the matter back to Council for consideration and direction.

Council Member Mounce provided general direction, stating she would like to see prayer continue, uncensored, prior to the Council meeting being called to order, on the agenda, and delivered by all religions and non-religions alike.

Mayor Hansen provided general direction, stating he would like to see prayer continue, uncensored, prior to the Council meeting being called to order, not on the agenda, voluntarily delivered by anybody who is a recognized part of the clergy of all faiths, with a process similar to that set forth in the ADF policy for establishing a list, etc., and a disclaimer be provided on the

agenda.

Council Member Johnson provided general direction, stating he would like to see prayer continue, uncensored, prior to the Council meeting being called to order, delivered by members of all faiths, and open to a call for civic responsibility for non-believers.

In response to Council Member Mounce, Mr. Schwabauer and Mr. Bowman opined that the courts look at a multi-factor analysis for what is government speech, which is not clear based on the differing court opinions, and therefore there is an attempt in the ADF policy to remove as many danger factors as possible based on previous case law.

In response to Mayor Hansen, Mr. Bowman confirmed that the ADF policy recommends not agendizing the invocation. A brief discussion ensued between Council Members Mounce and Hitchcock, Mr. Schwabauer, and Mr. Bowman regarding the possible effects of listing the invocations on the agenda or not.

Council Member Hitchcock provided general direction, stating she would like to see prayer continue, uncensored, prior to the Council meeting being called to order, and on the agenda.

Council Member Katzakian provided general direction, stating he would like to see prayer continue, uncensored, given by all faiths, not on the agenda, and a policy that protects against litigation as much as possible.

In response to Council Member Mounce and Mayor Pro Tempore Katzakian, Mr. Bowman stated what is government speech is a multi-factor consideration and it is best to avoid as many inferences as possible that you intend it to be government speech.

Mayor Hansen made a motion, second by Council Member Johnson, give direction to the City Attorney to develop a policy for uncensored invocations to be given prior to the beginning of a Council meeting, listed on the agenda, that actively encourages all religions to participate, with a call to civic responsibility for non-religious groups, a disclaimer with acknowledgement of diversity and non-endorsement, and prohibiting the elevation or demeaning of one religion over others.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

C. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 11:06 p.m.

ATTEST:

Randi Johl
City Clerk